



General Assembly

February Session, 2016

Substitute Bill No. 5606

* _____HB05606JUD_____032216_____*

**AN ACT CONCERNING THE CONNECTICUT REVISED UNIFORM
FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) Sections 1 to 18,
2 inclusive, of this act may be cited as the "Connecticut Revised Uniform
3 Fiduciary Access to Digital Assets Act".

4 Sec. 2. (NEW) (*Effective October 1, 2016*) As used in sections 1 to 18,
5 inclusive, of this act:

6 (1) "Account" means an arrangement under a terms-of-service
7 agreement in which a custodian carries, maintains, processes, receives
8 or stores a digital asset of the user or provides goods or services to the
9 user;

10 (2) "Agent" means an attorney-in-fact granted authority under a
11 durable or nondurable power of attorney;

12 (3) "Carries" means engages in the transmission of an electronic
13 communication;

14 (4) "Catalogue of electronic communications" means information
15 that identifies each person with which a user has had an electronic
16 communication, the time and date of the communication, and the
17 electronic address of the person;

18 (5) "Conservator" means a person appointed by a court to manage
19 the estate of a living individual. "Conservator" includes a limited
20 conservator;

21 (6) "Content of an electronic communication" or "content of
22 electronic communications" means information concerning the
23 substance or meaning of the communication which:

24 (A) Has been sent or received by a user;

25 (B) Is stored in electronic form by a custodian providing an
26 electronic-communication service to the public or is carried or
27 maintained by a remote-computing service to the public; and

28 (C) Is not readily accessible to the public;

29 (7) "Court" means a court of competent jurisdiction, including, but
30 not limited to, the Probate Court or the Superior Court. A judge of the
31 Probate Court or the Superior Court shall be deemed a judge of
32 competent jurisdiction for the purposes of 18 USC 2510(9), as amended
33 from time to time, with respect to an order issued under any provision
34 of sections 1 to 18, inclusive, of this act;

35 (8) "Custodian" means a person that carries, maintains, processes,
36 receives or stores a digital asset of a user;

37 (9) "Designated recipient" means a person chosen by a user using an
38 online tool to administer digital assets of the user;

39 (10) "Digital asset" means an electronic record in which an
40 individual has a right or interest. "Digital asset" does not include an
41 underlying asset or liability unless the asset or liability is itself an
42 electronic record;

43 (11) "Electronic" means relating to technology having electrical,
44 digital, magnetic, wireless, optical, electromagnetic or similar
45 capabilities;

46 (12) "Electronic communication" has the meaning set forth in 18 USC
47 2510(12), as amended from time to time;

48 (13) "Electronic-communication service" means a custodian that
49 provides to a user the ability to send or receive an electronic
50 communication;

51 (14) "Fiduciary" means an original, additional or successor executor,
52 conservator, agent or trustee;

53 (15) "Information" means data, text, images, videos, sounds, codes,
54 computer programs, software, databases or the like;

55 (16) "Online tool" means an electronic service provided by a
56 custodian that allows the user, in an agreement distinct from the
57 terms-of-service agreement between the custodian and the user, to
58 provide directions for disclosure or nondisclosure of digital assets to a
59 third person;

60 (17) "Person" means an individual, estate, business or nonprofit
61 entity, public corporation, government or governmental subdivision,
62 agency or instrumentality or other legal entity;

63 (18) "Executor" means an executor, administrator, special
64 administrator, temporary administrator of an estate or any person that
65 performs substantially the same functions as such executor,
66 administrator, special administrator or temporary administrator under
67 the laws of this state, other than sections 1 to 18, inclusive, of this act;

68 (19) "Power of attorney" means a record that grants an agent
69 authority to act in the place of a principal;

70 (20) "Principal" means an individual who grants authority to an
71 agent in a power of attorney;

72 (21) "Conserved person" means an individual for whom a
73 conservator has been appointed. "Conserved person" includes a

74 respondent, as defined in section 45a-644 of the general statutes, for
75 whom an application for the appointment of a conservator is pending;

76 (22) "Record" means information that is inscribed on a tangible
77 medium or that is stored in an electronic or other medium and is
78 retrievable in perceivable form;

79 (23) "Remote-computing service" means a custodian that provides to
80 a user computer-processing services or the storage of digital assets by
81 means of an electronic communications system, as defined in 18 USC
82 2510(14), as amended from time to time;

83 (24) "Terms-of-service agreement" means an agreement that controls
84 the relationship between a custodian and a user;

85 (25) "Trustee" means a fiduciary with legal title to property under an
86 agreement or declaration that creates a beneficial interest in another.
87 "Trustee" includes a successor trustee;

88 (26) "User" means a person that has an account with a custodian;
89 and

90 (27) "Will" includes a codicil, testamentary instrument that only
91 appoints an executor and instrument that revokes or revises a
92 testamentary instrument.

93 Sec. 3. (NEW) (*Effective October 1, 2016*) (a) Sections 1 to 18, inclusive,
94 of this act apply to:

95 (1) A fiduciary acting under a will or power of attorney executed
96 before, on or after October 1, 2016;

97 (2) An executor acting for a decedent who died before, on or after
98 October 1, 2016;

99 (3) A conservatorship proceeding commenced before, on or after
100 October 1, 2016; and

101 (4) A trustee acting under a trust created before, on or after October
102 1, 2016.

103 (b) Sections 1 to 18, inclusive, of this act apply to a custodian if the
104 user resides in this state or resided in this state at the time of the user's
105 death.

106 (c) Sections 1 to 18, inclusive, of this act do not apply to a digital
107 asset of an employer used by an employee in the ordinary course of
108 the employer's business.

109 Sec. 4. (NEW) (*Effective October 1, 2016*) (a) A user may use an online
110 tool to direct the custodian to disclose to a designated recipient, or not
111 to disclose to a designated recipient, some or all of the user's digital
112 assets, including the content of electronic communications. If the
113 online tool allows the user to modify or delete a direction at all times, a
114 direction regarding disclosure using an online tool overrides a
115 contrary direction by the user in a will, trust, power of attorney or
116 other record.

117 (b) If a user has not used an online tool to give direction under
118 subsection (a) of this section or if the custodian has not provided an
119 online tool to give such direction, the user may allow or prohibit in a
120 will, trust, power of attorney or other record disclosure to a fiduciary
121 of some or all of the user's digital assets, including the content of
122 electronic communications sent or received by the user.

123 (c) A user's direction under subsection (a) or (b) of this section
124 overrides a contrary provision in a terms-of-service agreement that
125 does not require the user to act affirmatively and distinctly from the
126 user's assent to the terms-of-service agreement.

127 Sec. 5. (NEW) (*Effective October 1, 2016*) (a) Sections 1 to 18, inclusive,
128 of this act do not change or impair a right of a custodian or a user
129 under a terms-of-service agreement to access and use digital assets of
130 the user.

131 (b) Sections 1 to 18, inclusive, of this act do not give a fiduciary or a
132 designated recipient any new or expanded rights other than those held
133 by the user for whom, or for whose estate, the fiduciary or designated
134 recipient acts or represents.

135 (c) A fiduciary's or designated recipient's access to digital assets
136 may be modified or eliminated by a user, by federal law or by a terms-
137 of-service agreement if the user has not provided direction under
138 section 4 of this act.

139 Sec. 6. (NEW) (*Effective October 1, 2016*) (a) When disclosing digital
140 assets of a user under sections 1 to 18, inclusive, of this act, the
141 custodian may, at its sole discretion:

142 (1) Grant a fiduciary or designated recipient full access to the user's
143 account;

144 (2) Grant a fiduciary or designated recipient partial access to the
145 user's account sufficient to perform the tasks with which the fiduciary
146 or designated recipient is charged; or

147 (3) Provide a fiduciary or designated recipient a copy in a record of
148 any digital asset that, on the date the custodian received the request for
149 disclosure, the user could have accessed if the user were alive and had
150 full capacity and access to the account.

151 (b) A custodian may assess a reasonable administrative charge for
152 the cost of disclosing digital assets under sections 1 to 18, inclusive, of
153 this act.

154 (c) A custodian need not disclose under any provision of sections 1
155 to 18, inclusive, of this act a digital asset deleted by a user.

156 (d) If a user directs or a fiduciary requests a custodian to disclose
157 under any provision of sections 1 to 18, inclusive, of this act some, but
158 not all, of the user's digital assets, the custodian need not disclose the
159 assets if segregation of the assets would impose an undue burden on

160 the custodian. If the custodian believes the direction or request
161 imposes an undue burden on the custodian, the custodian or fiduciary
162 may seek an order from the court to disclose:

163 (1) A subset limited by date of the user's digital assets;

164 (2) All of the user's digital assets to the fiduciary or designated
165 recipient;

166 (3) None of the user's digital assets; or

167 (4) All of the user's digital assets to the court for review in camera
168 for the purpose of permitting the court to issue an order pursuant to
169 sections 1 to 18, inclusive, of this act.

170 Sec. 7. (NEW) (*Effective October 1, 2016*) If a deceased user consented
171 to, or a court directs disclosure of, the contents of electronic
172 communications of the user, the custodian shall disclose to the
173 executor of the estate of the user the content of an electronic
174 communication sent or received by the user if the executor gives the
175 custodian:

176 (1) A written request for disclosure in physical or electronic form;

177 (2) A certified copy of the death certificate of the user;

178 (3) A certified copy of the certificate of appointment as executor;

179 (4) Unless the user provided direction using an online tool, a copy of
180 the user's will, trust, power of attorney or other record evidencing the
181 user's consent to disclosure of the content of electronic
182 communications; and

183 (5) If requested by the custodian:

184 (A) A number, username, address or other unique subscriber or
185 account identifier assigned by the custodian to identify the user's
186 account;

187 (B) Evidence linking the account to the user; or

188 (C) A court record or order that includes a finding by the court that:

189 (i) The user had a specific account with the custodian that is
190 identifiable by the information specified in subparagraph (A) of this
191 subdivision;

192 (ii) Disclosure of the content of electronic communications of the
193 user would not violate 18 USC 2701 et seq., 47 USC 222, or other
194 applicable law, as amended from time to time;

195 (iii) Unless the user provided direction using an online tool, the user
196 consented to disclosure of the content of electronic communications; or

197 (iv) Disclosure of the content of electronic communications of the
198 user is reasonably necessary for administration of the estate.

199 Sec. 8. (NEW) (*Effective October 1, 2016*) Unless the user prohibited
200 disclosure of digital assets or the court directs otherwise, a custodian
201 shall disclose to the executor of the estate of a deceased user a
202 catalogue of electronic communications sent or received by the user
203 and digital assets, other than the content of electronic communications,
204 of the user, if the executor gives the custodian:

205 (1) A written request for disclosure in physical or electronic form;

206 (2) A certified copy of the death certificate of the user;

207 (3) A certified copy of the certificate of appointment as executor;
208 and

209 (4) If requested by the custodian:

210 (A) A number, username, address or other unique subscriber or
211 account identifier assigned by the custodian to identify the user's
212 account;

213 (B) Evidence linking the account to the user;

214 (C) An affidavit stating that disclosure of the user's digital assets is
215 reasonably necessary for administration of the estate; or

216 (D) A finding by the court that:

217 (i) The user had a specific account with the custodian that is
218 identifiable by the information specified in subparagraph (A) of this
219 subdivision; or

220 (ii) Disclosure of the user's digital assets is reasonably necessary for
221 administration of the estate.

222 Sec. 9. (NEW) (*Effective October 1, 2016*) To the extent a power of
223 attorney expressly grants an agent authority over the content of
224 electronic communications sent or received by the principal and unless
225 directed otherwise by the principal or the court, a custodian shall
226 disclose to the agent the content of electronic communications if the
227 agent gives the custodian:

228 (1) A written request for disclosure in physical or electronic form;

229 (2) An original or copy of the power of attorney expressly granting
230 the agent authority over the content of electronic communications of
231 the principal;

232 (3) A certification by the agent, under penalty of perjury, that the
233 power of attorney is in effect; and

234 (4) If requested by the custodian:

235 (A) A number, username, address or other unique subscriber or
236 account identifier assigned by the custodian to identify the principal's
237 account; or

238 (B) Evidence linking the account to the principal.

239 Sec. 10. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered
240 by the court, directed by the principal or provided by a power of
241 attorney, a custodian shall disclose to an agent with specific authority
242 over digital assets or general authority to act on behalf of a principal a
243 catalogue of electronic communications sent or received by the
244 principal and digital assets, other than the content of electronic
245 communications, of the principal if the agent gives the custodian:

246 (1) A written request for disclosure in physical or electronic form;

247 (2) An original or a copy of the power of attorney that gives the
248 agent specific authority over digital assets or general authority to act
249 on behalf of the principal;

250 (3) A certification by the agent, under penalty of perjury, that the
251 power of attorney is in effect; and

252 (4) If requested by the custodian:

253 (A) A number, username, address or other unique subscriber or
254 account identifier assigned by the custodian to identify the principal's
255 account; or

256 (B) Evidence linking the account to the principal.

257 Sec. 11. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered
258 by the court or provided in a trust, a custodian shall disclose to a
259 trustee who is an original user of an account any digital asset of the
260 account held in trust, including a catalogue of electronic
261 communications of the trustee and the content of electronic
262 communications.

263 Sec. 12. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered
264 by a court, directed by the user or provided in a trust, a custodian shall
265 disclose to a trustee who is not an original user of an account the
266 content of an electronic communication sent or received by an original
267 or successor user and carried, maintained, processed, received or

268 stored by the custodian in the account of the trust if the trustee gives
269 the custodian:

270 (1) A written request for disclosure in physical or electronic form;

271 (2) A certified copy of the trust instrument that includes consent to
272 disclosure of the content of electronic communications to the trustee;

273 (3) A certification by the trustee, under penalty of perjury, that the
274 trust exists and the trustee is a currently acting trustee of the trust; and

275 (4) If requested by the custodian:

276 (A) A number, username, address or other unique subscriber or
277 account identifier assigned by the custodian to identify the account of
278 the trust; or

279 (B) Evidence linking the account to the trust.

280 Sec. 13. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered
281 by the court, directed by the user or provided in a trust, a custodian
282 shall disclose, to a trustee who is not an original user of an account, a
283 catalogue of electronic communications sent or received by an original
284 or successor user and carried, maintained, processed, received or
285 stored by the custodian in an account of the trust and any digital
286 assets, other than the content of electronic communications, in which
287 the trust has a right or interest if the trustee gives the custodian:

288 (1) A written request for disclosure in physical or electronic form;

289 (2) A certified copy of the trust instrument;

290 (3) A certification by the trustee, under penalty of perjury, that the
291 trust exists and the trustee is a currently acting trustee of the trust; and

292 (4) If requested by the custodian:

293 (A) A number, username, address or other unique subscriber or

294 account identifier assigned by the custodian to identify the trust's
295 account; or

296 (B) Evidence linking the account to the trust.

297 Sec. 14. (NEW) (*Effective October 1, 2016*) (a) After an opportunity for
298 a hearing in the manner prescribed in sections 45a-645a to 45a-645c,
299 inclusive, of the general statutes, a court may grant a conservator
300 access to the digital assets of a conserved person.

301 (b) Unless otherwise ordered by the court or directed by the user, a
302 custodian shall disclose to a conservator the catalogue of electronic
303 communications sent or received by a conserved person and any
304 digital assets, other than the content of electronic communications, in
305 which the conserved person has a right or interest if the conservator
306 gives the custodian:

307 (1) A written request for disclosure in physical or electronic form;

308 (2) A certified copy of the court order that gives the conservator
309 authority over the digital assets of the conserved person; and

310 (3) If requested by the custodian:

311 (A) A number, username, address or other unique subscriber or
312 account identifier assigned by the custodian to identify the account of
313 the conserved person; or

314 (B) Evidence linking the account to the conserved person.

315 (c) A conservator with general authority to manage the assets of a
316 conserved person may request a custodian of the digital assets of the
317 conserved person to suspend or terminate an account of the conserved
318 person for good cause. A request made under this subsection must be
319 accompanied by a certified copy of the certificate of appointment
320 giving the conservator authority over the conserved person's property.

321 Sec. 15. (NEW) (*Effective October 1, 2016*) (a) The legal duties

322 imposed on a fiduciary charged with managing tangible property
323 apply to the management of digital assets, including:

324 (1) The duty of care;

325 (2) The duty of loyalty; and

326 (3) The duty of confidentiality.

327 (b) A fiduciary's or designated recipient's authority with respect to a
328 digital asset of a user:

329 (1) Except as otherwise provided in section 4 of this act, is subject to
330 the applicable terms-of-service agreement;

331 (2) Is subject to other applicable law, including copyright law;

332 (3) In the case of a fiduciary, is limited by the scope of the fiduciary's
333 duties; and

334 (4) May not be used to impersonate the user.

335 (c) A fiduciary with authority over the property of a decedent,
336 conserved person, principal or settlor has the right to access any digital
337 asset in which the decedent, conserved person, principal or settlor had
338 a right or interest and that is not held by a custodian or subject to a
339 terms-of-service agreement.

340 (d) A fiduciary acting within the scope of the fiduciary's duties is an
341 authorized user of the property of the decedent, conserved person,
342 principal or settlor for the purpose of applicable computer-fraud and
343 unauthorized-computer-access laws, including, but not limited to,
344 section 53a-251 of the general statutes.

345 (e) A fiduciary with authority over the tangible, personal property
346 of a decedent, conserved person, principal or settlor:

347 (1) Has the right to access the property and any digital asset stored

348 in it; and

349 (2) Is an authorized user for the purpose of computer-fraud and
350 unauthorized-computer-access laws, including, but not limited to,
351 section 53a-251 of the general statutes.

352 (f) A custodian may disclose information in an account to a
353 fiduciary of the user when the information is required to terminate an
354 account used to access digital assets licensed to the user.

355 (g) A fiduciary of a user may request a custodian to terminate the
356 user's account. A request for termination must be in writing, in either
357 physical or electronic form, and accompanied by:

358 (1) A certified copy of the death certificate of the user if the user is
359 deceased;

360 (2) A certified copy of any one or more of the following that gives
361 the fiduciary authority over the account:

362 (A) A certificate of appointment as executor;

363 (B) A certificate of appointment as conservator;

364 (C) A power of attorney; or

365 (D) A trust; and

366 (3) If requested by the custodian:

367 (A) A number, username, address or other unique subscriber or
368 account identifier assigned by the custodian to identify the user's
369 account;

370 (B) Evidence linking the account to the user; or

371 (C) A finding by a court that the user had a specific account with the
372 custodian that is identifiable by the information specified in
373 subparagraph (A) of this subdivision.

374 Sec. 16. (NEW) (*Effective October 1, 2016*) (a) Not later than sixty days
375 after receipt of the information required under sections 7 to 15,
376 inclusive, of this act, a custodian shall comply with a request under
377 any provision of sections 1 to 18, inclusive, of this act from a fiduciary
378 or designated recipient to disclose digital assets or terminate an
379 account. If the custodian fails to comply with such request, the
380 fiduciary or designated recipient may apply to the court for an order
381 directing compliance with the request.

382 (b) An order under subsection (a) of this section directing
383 compliance with such request must contain a finding that compliance
384 is not in violation of 18 USC 2702, as amended from time to time.

385 (c) A custodian may notify the user that a request was made under
386 sections 1 to 18, inclusive, of this act for disclosure or to terminate an
387 account.

388 (d) A custodian may deny a request under any provision of sections
389 1 to 18, inclusive, of this act from a fiduciary or designated recipient
390 for disclosure of digital assets or to terminate an account if the
391 custodian is aware of any lawful access to the account following the
392 receipt of the fiduciary's request.

393 (e) Sections 1 to 18, inclusive, of this act do not limit a custodian's
394 ability to obtain or require a fiduciary or designated recipient
395 requesting disclosure or termination under sections 1 to 18, inclusive,
396 of this act to obtain a court order which:

397 (1) Specifies that an account belongs to the conserved person or
398 principal;

399 (2) Specifies that there is sufficient consent from the conserved
400 person or principal to support the requested disclosure; and

401 (3) Contains a finding required by law other than the provisions of
402 sections 1 to 18, inclusive, of this act.

403 (f) A custodian and its officers, employees and agents are immune
 404 from liability for an act or omission done in good faith in compliance
 405 with the provisions of sections 1 to 18, inclusive, of this act.

406 Sec. 17. (NEW) (*Effective October 1, 2016*) In applying and construing
 407 this Connecticut Revised Uniform Fiduciary Access to Digital Assets
 408 Act, consideration must be given to the need to promote uniformity of
 409 the law with respect to its subject matter among states that enact the
 410 Revised Uniform Fiduciary Access to Digital Assets Act.

411 Sec. 18. (NEW) (*Effective October 1, 2016*) Sections 1 to 17, inclusive,
 412 of this act modify, limit or supersede the Electronic Signatures in
 413 Global and National Commerce Act, 15 USC 7001 et seq., but do not
 414 modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c) or
 415 authorize electronic delivery of any of the notices described in Section
 416 103(b) of said act, 15 USC 7003(b).

417 Sec. 19. Section 45a-334a of the general statutes is repealed. (*Effective*
 418 *October 1, 2016*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016</i>	New section
Sec. 3	<i>October 1, 2016</i>	New section
Sec. 4	<i>October 1, 2016</i>	New section
Sec. 5	<i>October 1, 2016</i>	New section
Sec. 6	<i>October 1, 2016</i>	New section
Sec. 7	<i>October 1, 2016</i>	New section
Sec. 8	<i>October 1, 2016</i>	New section
Sec. 9	<i>October 1, 2016</i>	New section
Sec. 10	<i>October 1, 2016</i>	New section
Sec. 11	<i>October 1, 2016</i>	New section
Sec. 12	<i>October 1, 2016</i>	New section
Sec. 13	<i>October 1, 2016</i>	New section
Sec. 14	<i>October 1, 2016</i>	New section
Sec. 15	<i>October 1, 2016</i>	New section

Sec. 16	<i>October 1, 2016</i>	New section
Sec. 17	<i>October 1, 2016</i>	New section
Sec. 18	<i>October 1, 2016</i>	New section
Sec. 19	<i>October 1, 2016</i>	Repealer section

Statement of Legislative Commissioners:

In Section 2(6)(B), "a custodian providing" was deleted to avoid repetition, in Section 2(18), the provisions were rewritten for accuracy, in Sections 7 and 8, "representative" was changed to "executor" for consistency with the defined term, and throughout the bill "as amended from time to time" was added after citations to the U.S. Code and technical changes were made for accuracy and proper form.

JUD *Joint Favorable Subst. -LCO*